DOCUMENT RESUME

ED 308 529 CS 211 947

AUTHOR Sanders, Craig
TITLE Reluctant Partners; How Eight Indiana Newspapers Use Attorneys in the Editorial Process.
PUB DATE Aug 89
NOTE 31p.; Paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication (72nd, Washington, DC, August 10-13, 1989).
PUB TYPE Speeches/Conference Papers (150) -- Reports - Research/Technical (143)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Conflict Resolution; Court Litigation; *Lawyers; Legal Problems; *Newspapers; Publishing Industry; Questionnaires
IDENTIFIERS Editorial Policy; Indiana; Journalism Research; *Libel

ABSTRACT

A study explores how and to what extent eight Indiana newspapers in six communities use attorneys in the editorial process and to resolve disputes. Editors who supervise the newsrooms of the eight papers were interviewed using a questionnaire composed of both closed and open-ended questions. Results indicated that newspapers in the larger communities consulted attorneys more frequently and about a wider range of legal issues, received more threats of lawsuits, were plaintiffs in lawsuits more often, and were more likely to believe their attorneys were sympathetic about press rights. Results also indicated that when faced with a potential legal dispute, all of the newspapers' first response was to attempt to handle the conflict without resorting to an attorney. (One figure is included; six tables of data and 46 notes are attached.) (RS)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED308529

RELUCTANT PARTNERS; HOW EIGHT INDIANA NEWSPAPERS USE ATTORNEYS IN THE EDITORIAL PROCESS

By Craig Sanders
Graduate Student
Indiana University
Bloomington, Indiana 47405

A Paper Presented to the Law Division of the Association for Education in Journalism and Mass Communications, Annual Convention, August 10-13, 1989, Washington, D.C.

CS211947

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Craig Sanders
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☐ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

RELUCTANT PARTNERS: HOW EIGHT INDIANA NEWSPAPERS
USE ATTORNEYS IN THE EDITORIAL PROCESS

By some accounts the legal landscape is fraught with peril for the press. Libel judgments -- some in the multimillion dollar range -- against press defendants in the past decade have led some to suggest that lawsuits are increasingly being used to punish and silence the press.[1] Several U.S. Supreme Court decisions in the past decade have been characterized by some journalists as anti-press.[2] The 1986 appointment of William Rehnquist as chief justice and Antonin Scalia as justice is believed by some to mean the court may become even more anti-press.[3] It has also been suggested that codes of ethics could be used against the press in tort suits brought for physical harm suffered as a result of a story published or broadcast.[4]

The effect of these developments on press behavior is difficult to assess. One study found that Florida newspaper editors had increased consultations with attorneys and had turned away from "generalists" and "corporate lawyers" in favor of attorneys specializing in mass media law.[5] A $9.2 million libel judgment cooled the investigative will of a small Illinois newsaper.[6] After being sued 11 times in seven years, a Pennsylvania publisher ceased investigative reporting.[7] Some newspapers saw their libel insurance premiums jump by

200 percent in one year alone.[8]

But some researchers have suggested that anti-press court cases have had little effect.[9] Many newspapers claim they still do aggressive reporting.[10] Not all recent court decisions have gone against the press.[11] Libel and tort suits against the press are actually uncommon -- only about two filed per week nationwide. And the press wins nearly 90 percent of the time when suits are litigated.[12]

Media organizations have various ways to deal with legal issues. One way is by hiring attorneys. Representing the newspaper in court is but one role attorneys might perform. Newspapers could have attorneys read stories in advance of publication to check for material that could cause legal problems. They could be used to mediate disputes. Or they could be used to advise or educate staff on legal issues.

This study explores how eight Indiana newspapers use attorneys in the editorial process and to resolve disputes. It seeks to show that while all the newspapers studied expressed reluctance to involve attorneys, the size of the newspaper appears to be a key variable in the frequency with which newspapers use attorneys, the purpose for which they are used and the willingness of the newspaper to use attorneys. The newspapers thus appear to reflect the prevailing legal climates of their communities.

The Attorney's Place in the Disputing Process

Attorneys are used by newspapers in various arrangements. A small number of papers have their own legal staff. Some chain-owned newspapers have access to an attorney working exclusively for that

chain. State press associations often have a staff attorney. But usually newspapers hire local attorneys on retainer or a per case basis.[13] In this paper, attorneys will be considered as third parties, meaning they are not original participants in a conflict between a newspaper and someone else.

The first step of the disputing process is the grievance stage. An event occurs that may cause someone to perceive that they have been injured in some way. If that person attributes the injury to the fault of another, they have escalated the injury into a grievance.[14] The injured person feels entitled to a resource that someone else, though not necessarily the blamed party, may grant or deny.[15]

The second or conflict stage occurs when the aggrieved confronts the blamed party.[16] The grievance has now escalated into a conflict. The aggrieved may do more than express discontent to the blamed party. It is only when the aggrieved party states a claim for compensation from the blamed party that a conflict begins to escalate into a dispute.[17]

The third, or disputing stage, does not begin to develop unless the blamed party rejects wholly or in part the claim of the aggrieved. A conflict becomes a dispute when one or both parties take the matter to a third party, which could be an attorney.[18] However, at various points along the way, the aggrieved party can end by process by dropping out or deciding not to press a claim.

Pritchard has illustrated how the disputing process model might work in the case of a person written about by a news organization.

Figure 1 Goes About Here

From the time of publication, the aggrieved person faces a series of decisions about whether to continue or drop out of the process. The initial decision is whether the story caused a problem. If not, the process ends. But if so, the decision-making becomes whether or not to make a claim and how far to pursue it.[19] The disputing process stages are not always sequential. Some people may go directly from an injurious experience to an attorney's office determined to file a lawsuit. In other situations, a dispute may bounce back and forth between the conflict and dispute stage before being resolved.[20]

By the time an attorney becomes involved, the dispute is usually in an advanced stage and probably has been going on for some time.[21] Much behavior can and usually does occur from the time someone perceives an injurious experience to the filing of a lawsuit.[22]

Related Research

While much attention in mass communications law has been paid to the top of the disputing process -- court action -- less attention has been paid to the lower stages of the disputing process.[23] Research in non-media contexts has suggested that most grievances and claims never reach either the court system or an attorney's office. Galanter reports that in a study of interorganizational conflicts, the mean response was 90 percent when respondents were asked to estimate the

number of disputes they had settled without resort to a third party -- either a lawyer or a court. Resorting to a third party is relatively rare across all classes of conflicts.[24]

In a study of grievances, claims and disputes that could have been processed by a civil law court, Miller and Sarat suggested the existence of dispute pyramids. The number of claims made and disputes occurring are high, but the number of cases taken to attorneys and that are litigated are low.[25] Similarly, Best and Andreasen in their study of consumer complaints found that the complaints consumers make represent but the tip of the iceberg of the problems that consumers perceive.[26]

The implications of this research to the extent that it is generalizable to the news media is that attorneys can be expected to deal with relatively few of the complaints, grievances or claims made against newspapers. By the time a newspaper calls in its attorney to handle a dispute, the problem is probably well along and has been the subject of earlier communication between the newspaper's staff and the disputant. Thus the question arises of the effect bringing an attorney into a well-developed dispute has.

Dispute Transformation

Disputes are not static. They are subject to a process of transformation whereby the shape, nature and goals of the dispute are redefined and redirected as various actors surrounding the disputing parties interact.[27] It is within this realm that attorneys play a

crucial role in shaping the outcome of disputes.[28] By virtue of their role as gatekeepers to the courts, attorneys exercise considerable clout as to which cases are adjudicated and which are not.[29]

In the classical civil law model of the attorney-client relationship, the attorney is a hired gun representing the best interests of the client. Attorneys listen to client stories, determine if the client has a case and, if so, fight for the client in court. This model assumes that lawyers apply the law in an adversary system.[30] But Macaulay has theorized that lawyers are more often mediators than adversary figures. They would rather bargain for solutions that all find acceptable than go to court.[31] Like anyone else, attorneys have self-interests to protect.[32]

But self-interests may conflict. For many journalists, the First Amendment is a non-negotiable item. Journalists react strongly against censorship, prior restraint and efforts to curtail First Amendment freedoms. Fear of compromising these principles has led many journalists to oppose press councils, groups that review and critique press performance.[33] While the job of an attorney is not necessarily the same as that of a press council, both are third parties that could potentially transform the nature of a conflict between a newspaper and a disputant into a form that the newspaper does not want.

Disputes can be transformed by narrowing or widening.[34] In a libel case, for example, the dispute would be narrowed if it focused primarily on the damage done to the reputation of the plaintiff by the publication of an article by a particular newspaper. The dispute would be widened if it focused instead on the chilling effect of libel

judgments on the press as a whole. Disputants are not powerless actors in the transformation process.[35] But once a dispute reaches an attorney it is no longer the sole property of the disputants. Newspaper editors might therefore be reluctunt to turn disputes over to attorneys for fear they might transform a dispute into what the editor perceives as an adverse direction.

An editor's behavior, though, could be expected to vary depending on the editor's perception of the newpaper attorney's commitment to press rights. Editors who believe their attorneys are strong advocates for press rights should feel more comfortable working with their attorneys in resolving disputes. Newspapers that believe their attorneys are not as committed to press rights should feel less comfortable working with an attorney in resolving disputes. To say this, however, does not predict how often a newspaper will take a conflict to an attorney to be resolved.

Black has suggested that formal mechanisms of social control, i.e. courts, assume greater importance when informal controls are not effective.[36] Several theorists have emphasized the importance of the relationship between the parties in disputes as being a key determinant in what type of procedure the parties will choose to resolve their conflicts. People who have multiplex or continuing relationships are likely to choose dispute resolution processes that lead to compromise solutions. But people with simplex or non-continuing relationships will choose procedures that lead to win-or-lose solutions.[37]

The network of relationships that people have with each other is

partly a function of the type of community that they live in. In smaller, more homogenous communities, people tend to be dependent upon each other for their social welfare.[38] Disputants are less likely to resolve their differences through litigation for fear that going to court will disrupt important social ties. Gains of an uncertain victory are not worth the cost of social opprobrium.[39] Attorneys working in these communities see their work primarily as negotiation and advising clients.[40] Both attorneys and journalists see themselves as interacting in a network of relationships. This tends to mute conflict.[41]

But in more heterogenous communities, people are less likely to rely on others in the community for their social welfare. Rather than fearing that going to court may upset the social order, going to court may be viewed as merely one step in resolving disputes.[42] Attorneys in more urban communities tend to specialize in a particular field of law and serve a narrowly defined clientele.[43]

This theoretical framework holds many implications for a study that examines how newspapers use attorneys. It might be expected that in smaller communities newspapers would have less contact with attorneys than newspapers in larger communities. In the smaller communities the likelihood of being taken to court is less since people there prefer to work out their differences without resort to procedures requiring third parties (i.e. courts or arbitration). But if people in larger communities are more prone to resorting to the courts or arbitration panels to help resolve their differences, then newspapers in those communities should have greater contact with

attorneys. Researchers have found that even in urban communities many lawsuits are never litigated.[44] However, considering that the legal profession has a stranglehold on the specialized knowledge required to practice law in the court system, attorneys must be hired to perform even minimal legal work whenever a suit is filed.[45]

Method

Eight newspapers published in six Indiana communities were chosen for their proximity to Bloomington and because they represented all levels of the range of newspaper sizes in the state. The newspapers were the Indianapolis Star, the Indianapolis News, the Evansville Courier, the Evansville Press, the Bloomington Herald-Telephone, the Bedford Times-Mail, the Spencer Evening World and the Central City Tribune.[46]

A questionnaire composed of closed and open-ended questions was created to determine what arrangements each newspaper had in the hiring of attorneys, how often the newspaper had consulted with an attorney in the past year, how often the newspaper is threatened with legal action, what kinds of lawsuits the newspaper had been a party to in the previous five years, how the newspaper handles complaints, and how editors felt about involving attorneys in the editorial process. The questionnaire was given during an interview with the editor who supervises the newsroom.

Findings

Newspapers in Indianapolis and Evansville consulted more frequently with their attorneys during the study period than the

smaller newspapers. (Table 1).

The Star consulted with attorneys 25 to 30 times, the News 8 to 10 times, the Courier 30 to 40 times and the Press 25 times. The Herald-Telephone and Evening World reported fewer than six contacts each while the Times-Mail and Tribune reported no contact with attorneys. Times-Mail and Tribune editors explained their newspapers had not been threatened with legal action, although Times-Mail editor Bill Schrader said his newspaper receives a threat of legal action nearly every week, none of which he considers serious. However, all eight newspapers reported having consulted with Richard Cardwell, attorney for the Hoosier State Press Association. Newspaper size made no difference in the number of contacts with Cardwell (Table 1).

Indianapolis and Evansville newspapers also consulted with attorneys on a wider range of legal issues than did the smaller newspapers (Table 2). Of the 10 issues listed, the Star consulted with attorneys on all of them, the News and the Press on seven issues and the Courier on six issues. The Herald-Telephone consulted with an attorney only about clarifying and using the Indiana Open Meetings Act while the Evening World sought help on clarifying the meetings act and Indiana Open Records Act, and for help with a libel issue.

Only the Star, News and Herald-Telephone employ an attorney on retainer. Although the attorney for the Press and the Courier is not on retainer, he is used regularly by both newspapers. The arrangement is similar to that of a retainer. The Courier, Herald-Telephone and Times-Mail through their parent companies can call on an out-of-town attorney specializing in communications law.

The larger newspapers received substantially more lawsuit threats than the smaller newspapers (Table 3). Only the Star and Press said they had used an attorney to resolve disputes before they evolved into lawsuits. The Star's one case still resulted in a lawsuit being filed against the newspaper. However, Star editor Lawrence S. Connor said attorneys have previously enabled the newspaper to avoid lawsuits. Press editor Bill Jackson said he called in an attorney three or four times during the study period to help resolve conflicts. No lawsuits were filed against the newspaper.

Editors were asked what problems arise when a newspaper uses an attorney to attempt to resolve conflicts arising over stories whether published or not. Star editor Connor said he would not do it routinely, calling an attorney only when a conflict reaches an impasse or if the newspaper wants to demonstrate its willingness to fight a lawsuit. News editor Frank Caperton said he generally opposes turning a conflict over to attorneys and does so only after newspaper managers have engaged in a "great deal of conversation" with the disputant. Times-Mail editor Schrader and the Tribune editor both indicated that bringing an attorney in to help resolve a conflict risks prolonging it needlessly. Schrader said attorneys make money by dragging out disputes while the Tribune editor said involving an attorney might discourage disputants from being willing to settle a dispute quickly.

As for the newspapers' involvement in lawsuits, the Indianapolis and Evansville newspapers during the study period were more often plaintiffs than defendants (Table 4). Among the smaller newspapers, only the Herald-Telephone was involved in litigation (to quash a gag

order). With the except of a Press lawsuit to quash a gag order, all of the lawsuits initiated by the Indianapolis and Evansville newspapers were to gain access to documents or meetings.

The eight newspapers reported varying responses for dealing with threats of legal action by aggrieved parties (Table 5). They also varied in their perceptions of what proportion of the lawsuit threats they received were serious (Table 3). All of the smaller newspapers along with the Press reported handling threats differently when an attorney representing an aggrieved person calls than when the aggrieved person calls directly. At all newspapers, when the aggrieved person calls and threatens legal action, an editor attempts to work out the problem with the caller. Only the Times-Mail does not try to work out a dispute if an attorney calls and threatens legal action on behalf of a client. In that case, Times-Mail editor Schrader said he instructs the attorney to call the newspaper's attorney.

Seven of the eight newspapers reported having used an attorney in the newsgathering process (Table 6). However, most editors said they believed using attorneys to help gather news is more of a hindrance than a help. "I think it harms your professional status," said the Star's Connor. "Journalists should not rely on the legal profession to do their (journalists') work. It helps to maintain some distance between journalists and the legal profession."

"It's a last resort for me," said the Courier's Tom Tuley. "It's a very slow process." Added Press editor Jackson, "I don't see that that is the role of the attorney." Caperton of the News expressed a First Amendment concern in using attorneys in the newsgathering

process. "That robs him (attorney) of the ability to be a dispassionate reader." Evening World editor Tom Douglas said using an attorney to help gather news would damage his newspaper's credibility in his community. However, Douglas said he once considered using an attorney to help write a story about a judge who was allegedly acting improperly.

Reaction was mixed to the suggestion of hiring an attorney to be part of the newspaper's staff and performing such duties as reading stories for potential legal problems, and advising reporters and editors on how to avoid legal problems. Courier editor Tuley supported the idea, but said he lacked the money to hire an attorney for that purpose. News editor Caperton believes his staff would not object so long as the newspaper remained aggressive in news coverage. But the Star's Connor said his staff would resent it. "It's just like an outsider coming in. It would be intimidating." Schrader of the Times-Mail said, "I'm sure the staff would react negatively. If I was on the staff, I'd quit." Several editors indicated their staffs would probably question why the money used to hire the attorney was not instead used to hire another reporter.

For the most part, the editors said they are comfortable with the role attorneys now play in the editorial process. The News' Caperton spoke for many when he said, "Ours is about right. We're comfortable with what they're doing. To have no role (for attorneys) is foolhardy. On the other hand, we don't expect attorneys to make journalistic judgments for us." The Star's Connor and the Evening World's Douglas expressed support for attorneys taking a larger role in advising

reporters and editors in how to avoid legal problems. Connor and the Courier's Tuley said they periodically bring attorneys in to speak about recent development in press law. The lone dissenter was Schrader. "If attorneys play any role, it's too large of a role."

A large newspaper-small newspaper split in opinion cropped up when editors were asked if they believed that attorneys who represent newspapers have the same goals and beliefs as journalists on questions of press rights. Indianapolis and Evansville editors thought their attorneys felt strongly in favor of press freedom. Courier editor Tuley said he has encountered newspaper attorneys who felt more passionately about press rights than he did.

However, Schrader, Douglas and the Tribune editor responded negatively. "No. Their approach is entirely different from that of journalists," said the Tribune editor. Commented Evening World editor Douglas, "I doubt it seriously. A regular guy (attorney) wouldn't look at it the same way I would."

These attitudes appear rooted in the fact that these editors believe the attorneys in their communities are not knowledgable about press law. The Central City editor said he would hesitate to hire a local attorney for that reason. Herald-Telephone editor Bob Zaltsberg said he had not encountered any major disagreements on press rights and freedoms with attorneys representing his newspaper. But he questioned whether any attorney in Bloomington has much experience with or knowledge of libel law. "The key is to find an attorney who has the same goals [as the newspaper]. That's tougher to do in a city like Bloomington. We could get an attorney . . . [who] may be

extremely conservative . . . and might [recommend against] reporting a story we had every right to report."

Zaltsberg and the Tribune editor both said a particular problem for smaller newspapers is that their attorney might also represent a person or organization the newspaper has written about in its news columns. Said the Tribune editor: "An attorney may be biased. He may have a government unit he's representing. That's quite possible, especially here." Added Zaltsberg, "Our attorney is a good community-minded citizen who is still learning about newspaper law. In a small town, [the newspaper's attorney] could be the school board attorney. Our attorney has represented developers and public agencies."

Discussion

The newspapers in the larger communities consulted attorneys more frequently and about a wider range of legal issues, received more threats of lawsuits, were plaintiffs in lawsuits more often and were more likely to believe their attorneys were sympathetic about press rights. Newspapers in the smaller communities seldom consulted local attorneys. When they did, they discussed a narrower range of legal issues. Small town editors expressed strong doubt that their attorneys held the same beliefs as journalists about press law. The smaller city editors also expressed concern about potential conflicts of interest that their attorneys might have stemming from their representing clients whose activities are reported by the newspaper.

These findings tend to be consistent with other research findings that people in smaller communities are less likely to use the judicial

system as a way of resolving conflicts than are disputants in more urban or pluralistic communities. Some of the smaller community newspaper editors in this study indicated that although they had never been sued or filed suit for disputes arising from editorial operations, their newspapers had sued, though infrequently, over debt collection and other business matters.

When faced with a potential legal dispute, all of the newspapers' first response is to attempt to handle the conflict without resorting to an attorney. Involving an attorney is something to be avoided. The editors' responses seem to indicate a fear that involvement of an attorney could change the nature of the dispute or needlessly prolong it. Similarly, all editors reported infrequent use of attorneys to help gather information for news stories.

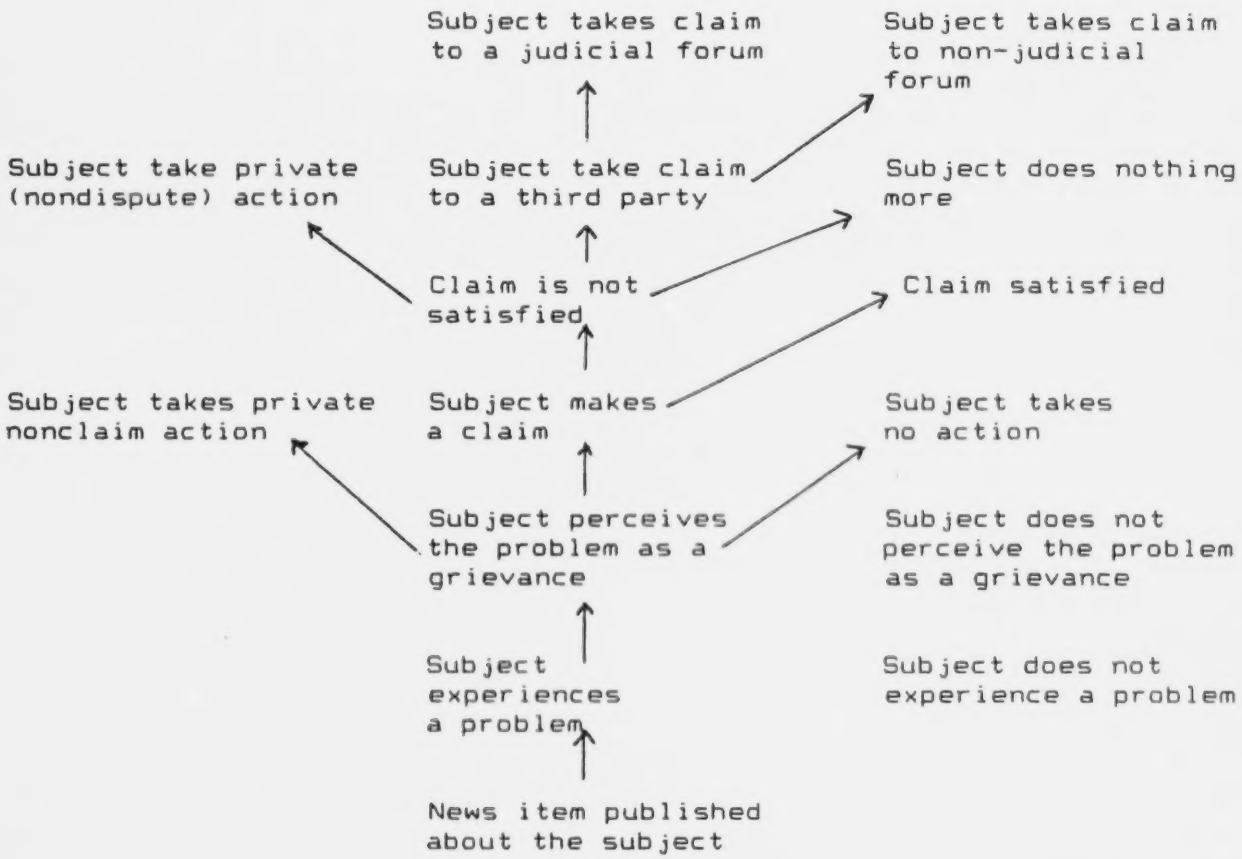
With one exception, the editors believe there is a need for attorneys to play some role in the newsroom. Among the roles cited were reading stories that might cause legal ramifications, advising about legal issues and educating the staff on the current state of press law. But editors would rather not share with attorneys any editorial decision making power, particularly where it involves journalistic judgments. Thus while attorneys and journalists are often partners, they are somewhat reluctant partners. When the newspapers in this study do involve attorneys, they to do so rather late in the disputing process. Although resort to attorneys was more frequent in the larger communities, the use of attorneys appears to be relatively infrequent at all newspapers.

Implications for Future Research

This study was an exploratory effort to begin to get a feel for how newspapers use attorneys in the editorial process. A number of avenues for further study remain to be explored. There is a need for case studies of specific situations where newspapers decided whether or not to involve an attorney. And further study is needed of the myriad of legal assistance available to journalists and how they make use of that assistance. For example, this study found that newspapers in the smaller communities had more frequent contact with Hoosier State Press Association attorney Richard Cardwell than they did with their local attorney. Besides their local attorney and Cardwell, the newspapers potentially can call upon attorneys who specialize in press law, attorneys hired by the chain that owns the newspaper or attorneys employed by press interest groups. The extent to which these various attorneys are easily accessible, affordable or even needed by newspapers can be expected to vary, perhaps greatly, and should be studied.

It may be that in many organizations, having to resort to a third party is seen as a failure or a breakdown in the established mechanisms organizations have to deal with complaints and disputes from outsiders. Nonetheless, organizations do find it necessary at times to employ third parties to either defend themselves in disputes or to initiate formal dispute resolution proceedings. The question thus is when, why and under what circumstances newspaper organizations resort to use of third parties.

Figure 1


Subject takes claim to a judicial forum
Subject takes claim to non-judicial forum
Subject take private (nondispute) action
Subject take claim to a third party
Subject does nothing more
Claim is not satisfied
Claim satisfied
Subject takes private nonclaim action
Subject makes a claim
Subject takes no action
Subject perceives the problem as a grievance
Subject does not perceive the problem as a grievance
Subject experiences a problem
Subject does not experience a problem
News item published about the subject

Possible path from being mentioned in a news story to asserting in a judicial forum that the story injured you. Source: David Pritchard, "A new Paradigm for Legal Research in Mass Communications," Communications and the Law, 8:51-67, 58 (1986).

TABLE 1

	Atty. on Retainer?	How often consulted Atty. in past year	Consulted Cardwell
Star	Yes	25-30	16
News	Yes	8-10	6
Courier	No	30-40	6-10
Press	No	25	12
Herald-Telephone	Yes	5	10
Times-Mail	No	0	3
Evening World	No	4	3
Tribune	No	0	12

Table 2

Issues Discussed with Newspaper's Attorney in Past Year

	A	B	C	D	E	F	G	H	I	J
Star	X	X	X	X	X	X	X	X	X	X
News	-	X	X	-	X	X	-	X	X	X
Courier	X	X	X	-	X	X	-	-	-	X
Press	X	X	X	-	X	X	-	X	X	-
Herald-Telephone	-	-	X	-	-	X	-	X	-	-
Times-Mail	-	-	-	-	-	-	-	-	-	-
Evening World	-	X	X	-	-	-	-	X	X	-
Tribune	-	-	-	-	-	-	-	-	-	-

A. Prior Restraint.
B. Clarify Indiana Open Records Act.
C. Clarify Indiana Open Meetings Act.
D. Clarify Freedom of Information Act.
E. Use open record act.
F. Use open meetings act
G. Use Freedom of Information Act
H. Answer pre-publication libel question
I. Advice on handling threat of libel suit
J. Responding to a libel suit.

The Courier also consulted on whether a reporter could be forced to testify at a murder trial. The Herald-Telephone used counsel to fight a subpoena for a photo negative.

The question was: "Which of these have you discussed with your attorney since January 1, 1987."

TABLE 3

	Threat for printed story	Threat before Publication	How many Serious
Star	10-15	5-6	All
News	6	2	Few
Courier	20-25	2-3	Some
Press	50	12	Most
Herald-Telephone	3	0	None
Times-Mail	*	0	Few
Evening World	2	1	All
Tribune	0	0	---

* The Times-Mail editor's response was: "people every week call you up and say 'I'll sue you.' "

TABLE 4

Lawsuits Within the Past 5 Years

	As Plaintiff	As Defendant
Star	8-10	at least 3
News	2	0
Courier	2	2
Press	3-4	0
Herald-Telephone	1	0
Times-Mail	0	0
Evening World	0	0
Tribune	0	0

NOTE: These responses are based on each newspaper editor's recollection. It is not know if any of editors consulted records before being interviewed to refresh their memories. The News' editor has been in Indianapolis for less than five years.

TABLE 5

How Threats of Legal Action are Handled

	When aggrieved party makes the threat	When aggrieved party's attorney makes threat
Star	B	B
News	E	E
Courier	B	B
Press	E	B
Herald-Telephone	E	B
Times-Mail	E	D
Evening World	B	C
Tribune	B	C

A. Handle the situation as best as I can and contact our attorney only if a suit is filed.

B. Handle the situation as best I can, and then contact our attorney to let him or her know what happened.

C. Handle the situation as best I can and then instruct the person making the threat to contact our newspaper's attorney.

D. Tell the person making the threat that I can not discuss a threat of legal action. I tell the person to contact our newspaper's attorney.

E. Varies from situation to situation.

Table 6

How Newspaper Used Attorney in Past Year

	A	B	C	D	E	F	G
Star	X	X	X	-	X	-	-
News	X	X	-	-	X	-	-
Courier	X	-	-	-	-	-	-
Press	X	X	-	-	X	-	-
Herald-Telephone	-	-	-	-	X	-	-
Times-Mail	X	-	-	-	-	-	-
Evening World	-	X	-	-	X	-	-
Tribune	-	-	-	-	-	-	X

A. Inform public officials that certain conduct violated the law.

B. Help file requests or complaints under open records, open meetings or freedom of information laws.

C. Conduct searches for information in legal records.

D. Advice on how to search for information in legal records.

E. Reading a story in advance of publication to determine if it was potentially libelous.

F. Other.

G. Did not use an attorney in the editorial process.

References

1. Anthony Lewis, "Annals of Law: The Sullivan Case," The New Yorker, November 5, 1984, pp. 52-95.

2. Among those sometimes cited are: Herbert v. Lando 441 U.S. 153 (1979) [That plaintiffs may probe the state of mind of journalists during libel proceedings.]; Gannett v. DePasquale 443 U.S. 368 (1979). [That press and public do not have a constitutional right to attend pre-trial hearings. The court later cast doubt on this decision with its rulings in Richmond Newspapers, Inc. v. Virginia 448 U.S. 555 (1980) (public has limited First Amendment right to attend trials); Globe Newspapers Co. v. Superior Court 457 U.S. 596 (1982) (closure of courts must be for compelling reason and for no longer than necessary); and Press-Enterprise v. Riverside County Superior Court 104 S. Ct. 819 (1984) (jury selection must be open to the public). See also Waller v. Georgia 104 S. Ct. 2210 (1984) (Extending Sixth Amendment rights of defendants to a public trial to pre-trial proceedings)]; Seattle Times v. Rhinehart 467 U.S. 20 (1984). [That a newspaper can be restrained from publishing information acquired during discovery proceedings of a lawsuit to which it is a party.]; Dun & Bradstreet v. Greenmoss Builders 105 S. Ct. 2939 (1985) [That when a false defamatory statement is not a "matter of public concern" a plaintiff need not prove actual malice. The court, however, did not define what it meant by "matters of public concern."]; Harper & Row, Publishers, Inc. v. Nation Enterprises, 471 U.S. 539 (1985) [That a magazine infringed copyright laws by publishing portions of a stolen copy of the memoirs of former President Gerald Ford.]; Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico, 106 S. Ct. 2986 (1986) [States may ban truthful advertising about lawful products.]; Hazelwood School District v. Kuhlmeier 108 S. Ct. 562 (1988) [That a high school principal may censor the school newspaper.]

3. Douglas A. Anderson, Joe W. Milner, Mary-Lou Galician, "How Editors View Legal Issues and the Rehnquist Court," Journalism Quarterly, 65:294-298, 294, 295.

4. Robert E. Deschsel, "Media Tort Liability for Physical Harm," Journalism Quarterly, 64:99-105 (1987).

5. Jo Anne Smith, "Nature of and Changes in Media-Lawyer Relationships," Journalism Quarterly, 60:714-717 (1983).

6. In 1969, two reporters for the Alton Telegraph wrote a memo to a U.S. Justice Department investigator asking if a local developer was receiving underworld money. The memo was passed on to federal bank investigators who shared the information with an Alton area savings institution that then cut off the developer's credit. Neither the memo, nor a story were ever printed in the Telegraph. Unable to afford

the appeal bond of more than $10 million, the Telegraph filed for bankruptcy. An out-of-court settlement was ultimately reached with insurance paying $1 million and the Telegraph having to borrow to pay the rest. Lewis, op. cit. p. 82.

Shortly after the libel case was settled, the Telegraph received a tip about possible misconduct in a sheriff's office. The newsaper declined to follow up. "Wouldn't you be gun-shy if you nearly lost your livelihood and your home?" an editor explained. "How Libel Suit Sapped the Crusading Spirit of a Small Newspaper," Wall Street Journal, September 29, 1983, p. 1.

7. Kent R. Middleton and Bill F. Chamberlin, (1988) The Law of Public Communication, New York: Longman, p. 74.

8. Ibid., p. 75.

9. Douglas A. Anderson and Marianne Murdock, "Effects of Communication Law Decisions on Daily Newspaper Editors," Journalism Quarterly, 58:525-28, 534 (1981); James Bow and Ben Silver, "Effects of Herbert v. Lando on Small Newspapers and TV Stations," Journalism Quarterly, 61:414-420 (1984).

10. Ibid.

11. Among the pro-press rulings cited are: Hustler Magazine v. Falwell 108 S. Ct. 876 (1988) [rejecting the imposition of an "outrageous" standard in libel actions.]; Philadelphia Newspapers v. Hepps 475 U.S. 767 (1986) [Private persons involved in matters of public interest must prove both falsity and that media was at fault.]; Anderson v. Liberty Lobby 477 U.S. 242 (1986) [Libel plaintiff must defeat motion for summary judgment with the same "clear and convincing" evidence necessary to win at trial.] Bose Corporation v. Consumers Union 104 S. Ct. 1949 (1984) [Fact writer admits a remark was false does not prove it was made with knowing falsehood.] Also, Richmond Newspapers, Inc. v. Virginia 448 U.S. 555 (1980); Globe Newspapers Co. v. Superior Court 457 U.S. 596 (1982); Press-Enterprise v. Riverside County Superior Court 104 S. Ct. 819 (1984); and Waller v. Georgia 104 S. Ct. 2210 (1984) [Cases discussed above in Note 2.]

12. Randall P. Bezanson, Gilbert Cranberg and John Soloski (1987) Libel Law and the Press: Myth and Reality. New York: The Free Press, p. 72.

13. Lyle W. Denniston (1980) The Reporter and the Law. New York: Hastings House.

14. Laura Nader and Harry F. Todd Jr., eds. (1980) The Disputing Process -- Law in Ten Societies. New York: Columbia University Press, p. 14.

15. Richard E. Miller and Austin Sarat, "Grievances, Claims and Disputes: Assessing the Adversary Culture," Law & Society Review, 15:525-566, 527 (1981).

16. Nader and Todd, op. cit., p. 15.

17. William L.F. Felstiner, Richard L. Abel and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .," Law & Society Review, 15:631-654 (1981).
17. Felstiner, Abel and Sarat, op. cit. pp. 635-636.

18. Nader and Todd, op. cit.

19. David Pritchard, "A New Paradigm for Legal Research in Mass Communications," Communications and the Law, 8:51-67 (1986).

20. Nader and Todd, op. cit.

21. Marc Galanter, "Reading the Landscape of Disputes: What we Know and Don't Know (And Think we Know) About our Allegedly Contentious and Litigious Society," U.C.L.A Law Review, 31:4-127, 12 (1983); Eric H. Steele, "Fraud, Dispute and The Consumer: Responding to Consumer Complaints," University of Pennsylvania Law Review, 123:1107-1185, 1143 (1975).

22. Felstiner, Abel, Sarat, op. cit.

23. Pritchard, op. cit, p. 57.

24. Galanter, op. cit. pp. 20, 22.

25. Miller and Sarat, op. cit, p. 546.

26. Arthur Best and Alan R. Andreasen, "Consumer Response to Unsatisfied Purchases: A Survey of Perceiving Defect, Voicing Complaints, and Obtaining Redress," Law & Society Review, 11:701-742, 701 (1977).

27. Barbara Yngvesson and Lynn Mather, "Courts, Moots and the Disputing Process," in Keith O. Boyum and Lynn Mather, eds., (1983) Empirical Theories About Courts., New York: Longman., p. 64.

28. Galanter, op. cit., p. 19.

29. Stewart Macaulay, "Lawyers and Consumer Protection Laws," Law & Society Review, 14:115-171, 124 (1979); Felstiner, Abel and Sarat, op. cit., p. 645; Galanter, op. cit.

30. Macaulay, op. cit., p. 116.

31. Ibid, p. 117.

32. Ibid.; Stewart Macaulay, "Law and the Behavioral Sciences: Is There any There There?" Law & Policy 6:149-187, 152-155 (1984).

33. David Cassady, "Press Councils -- Why Journalists Won't Cooperate," Newspaper Research Journal, 5:19 (1984).

34. Lynn Matheson and Barbara Yngvesson, "Language, Audience, and the Transformation of Disputes," Law & Society Review, 15: 775-821, 778, 779. (1981).

35. Nader and Todd, op. cit. pp. 18-26.

36. Donald Black (1976) The Behavior of Law. New York: Academic Press.

37. Nader and Todd, op. cit. p. 13.

38. Ibid., p. 21.

39. Sally Engle Merry, "Going to Court: Strategies of Dispute Management in an American Urban Neighborhood," Law & Society Review, 13: 891-925, 894, 895 (1979); David M. Engel, "The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community," Law & Society Review, 18: 551-582, 553, 554 1984).

40. Donald Landon, "LaSalle Street and Main Street: The Role of Context in Structuring Law Practice," Law & Society Review, 22: 213-236 (1988); Donald Landon, "Clients, Colleagues, and Community: The Shaping of Zealous Advocacy in Country Law Practice," American Bar Foundation Research Journal, 1985: 81-111.

41. Landon, op. cit.; Phillip J. Tichenor, George A. Donohue and Clarice N. Olien (1980) Community Conflict and the Press. Beverly Hills: Sage.

42. Merry, op. cit.

43. Landon, op. cit.

44. William L.F. Felstiner, "Influences of Social Organization on Dispute Processing," Law & Society Review, 9: 63-94 (1974).

45. John Henry Schlegel, "Searching for Archimedes -- Legal Education, Legal Scholarship, and Liberal Ideology," Journal of Legal Education, 34: 103-110, 106 (1984).

46. The circulation and community size (in parenthesis) of the newspapers in the study: Bedford Times-Mail, 14,566 afternoon (14,410); Bloomington Herald-Telephone, 26,986 afternoon and 42,403 Sunday (51,646); Central City Tribune, 3,161 afternoon (2,705); Evansville Courier, 63,026 morning and 114,929 Sunday; Evansville Press, 38,546 afternoon (130,496); Indianapolis Star, 229,595 morning

and 400,150 Sunday; Indianapolis News, 124,292 afternoon (700,807); and Spencer Evening World, 3,602 afternoon (2,732). [1987 Editor & Publisher International Yearbook.]

The Central City Tribune is a pseudonym. The newspaper's owner-editor requested anonymity in part because he feared that if word got out that he did not have libel insurance or much money to spend on legal services that that might make him an easier target of legal action.